

EXHIBIT A

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15 Attorneys for Defendant
16 ITV DIRECT, INC.

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **EASTERN DIVISION**

20 HEALTHY SOLUTIONS, LLC, a
21 California limited liability company, dba
22 DIRECT BUSINESS CONCEPTS;
23 HEALTH SOLUTIONS, INC., a
24 California corporation; DR.
25 ALEJANDRO GUERRERO, and
26 individual,

27 Plaintiffs,

28 v.

ITV DIRECT, INC., a Massachusetts
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. ED CV 04-00236-RT
(SGLx)

**DECLARATION OF ROBERT
MAIHOS IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I, ROBERT MAIHOS, declare as follows:

1. I am a principal shareholder of defendant ITV Direct, Inc. ("ITV"), and am responsible for the day-to-day operations of ITV. I make this declaration on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.

1 2. On April 4, 2003, ITV entered into an exclusive "Distribution
2 Agreement" with a California limited liability corporation, Healthy Solutions,
3 LLC, for the manufacture and distribution of a product known as "Supreme Greens
4 with MSM". A copy of that Distribution Agreement is attached hereto as
5 Exhibit A. The Distribution Agreement is governed by Massachusetts law.

6 3. Between April 4, 2003 and February 6, 2004, ITV issued purchase
7 orders to Healthy Solutions for the purchase of the Supreme Greens with MSM
8 product in varying quantities.

9 4. In order to promote the sale of Supreme Greens, ITV expended
10 millions of dollars on advertising for the product, primarily through the production
11 and airing of two separate infomercials featuring Healthy Solutions founder and
12 principal shareholder, Dr. Alex Guerrero. ITV also developed the logo and labels
13 for Supreme Greens with MSM, and with the encouragement and approval of
14 Healthy Solutions filed an application for federal registration of the name of the
15 product. Contrary to plaintiffs' assertions, that trademark application has not been
16 finally refused, but is still pending.

17 5. In late 2003, ITV learned that Healthy Solutions had filed a competing
18 trademark application for federal registration of the name "Supreme Greens with
19 MSM," in violation of the parties' agreement that the trademark would belong to
20 ITV. In early 2004, the parties orally modified the prior Distribution Agreement to
21 include sales of Supreme Greens with MSM over the Internet, transfer ownership
22 of the website address www.supremegreens.com, and the withdrawal of Healthy
23 Solutions' competing trademark application. In connection with this agreement,
24 ITV expended well in excess of a million dollars on additional marketing and
25 advertising for the product, which it has yet to recoup from sales of the product. In
26 addition, on January 9, 2004 ITV forwarded a check in an additional amount of
27 \$7,500 to confirm Healthy Solution's agreement to transfer ownership of the
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1 website. Healthy Solutions has cashed this check, confirming the agreement. A
2 copy of this letter and the check is attached as Exhibit B.

3 6. In February 2004, ITV learned that, despite the modified agreement,
4 payment for the website and ITV's continued expenditures on marketing and
5 advertising, Healthy Solutions had failed to provide an accounting of Internet sales
6 to ITV and had failed to withdraw its trademark application as promised, causing
7 substantial injury to ITV. Healthy Solutions has also sought to establish
8 relationships with other distributors, despite the exclusivity provision in the
9 Distribution Agreement. Based on these breaches of contract and other acts, ITV
10 has refused to pay Healthy Solutions under the Distribution Agreement, and on
11 March 2, 2004 filed an action in the United States District Court for the District of
12 Massachusetts against Healthy Solutions, Guerrero, and others, alleging breach of
13 contract, conversion, misrepresentation, and violations of Massachusetts state law.
14 A copy of that Complaint is attached hereto as Exhibit C. The following day, on
15 March 3, 2004, Healthy Solutions filed this action against ITV, alleging breach of
16 the same contract. A copy of that original complaint is attached hereto as Exhibit
17 D.

18 7. ITV has been substantially damaged by Healthy Solutions' breach of
19 contract, conversion and misrepresentation, as alleged in its complaint filed on
20 March 2, 2004 in Massachusetts. ITV believes that its damages caused by Healthy
21 Solutions' conduct exceed any amounts that Healthy Solutions currently claims is
22 owed to them.

23 8. I understand from a review of the plaintiffs' motion for a temporary
24 restraining order that the plaintiffs claim that ITV has produced, or is well into the
25 process of producing, a nutritional supplement bearing the mark "Supreme Greens"
26 that was manufactured by an entity other than Healthy Solutions. That claim is
27 false. ITV has never manufactured, bottled or sold any product under the label
28 "Supreme Greens with MSM" that was not delivered by Healthy Solutions or one

1 of its subcontractors. I am aware of no “fake,” “phony,” or “counterfeit” products
2 whatsoever currently in the marketplace, and ITV has neither produced nor sold
3 any such product.

4 9. In addition, ITV has not produced any labels bearing the name
5 “Supreme Greens with MSM,” and does not intend to produce labels bearing the
6 name “Supreme Greens with MSM” pending resolution of the issue of the
7 ownership of that trademark.

8 10. In his original declaration dated April 6, 2004, Guerrero stated that he
9 had a conversation with me on or about March 24, 2004 in which I told him that
10 ITV had received approximately 50,000 bottles of product from an unidentified
11 manufacturer. This alleged conversation never occurred, and I never spoke to
12 Guerrero on that date. I was in Florida on March 24, 2004, and, since
13 approximately mid-March 2004, all direct conversations between Guerrero and I
14 have ceased. Instead, discussions regarding possibly resolving our disputes were
15 being conducted by an impartial third-party intermediary, Todd Stanwood. The
16 alleged statement that Guerrero asserts that I made is utterly false, as ITV has
17 never received any bottles of any Supreme Greens product other than from Healthy
18 Solutions.

19 11. In his “amended” declaration dated April 8, 2004, Guerrero omits any
20 reference to a conversation between him and me on March 24, 2004, and now
21 states that he had a conversation with Mr. Stanwood on that date. Although Mr.
22 Stanwood was authorized to act as a neutral intermediary, I at no time authorized
23 him to make the representations contained in paragraph 8 of Guerrero’s amended
24 declaration regarding the ordering of 50,000 bottles of an “imposter” product
25 bearing the Supreme Greens label. Moreover, I would not have authorized Mr.
26 Stanwood to make such representations because ITV did not order 50,000 bottles
27 of an “imposter” of the Supreme Greens product, let alone 50,000 bottles of such
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1 product bearing the Supreme Greens mark. I understand that Mr. Stanwood denies
2 making the statements attributed to him in the amended Guerrero declaration.

3 12. In his amended declaration, Guerrero also states in paragraph 8 that
4 "on or about March 29, 2994 [sic] Defendant again asserted it had ordered 50,000
5 bottles of the phony product." I never spoke to Guerrero on or about March 29,
6 2004, nor did I authorize anybody to make this representation to him. I again
7 understand that Mr. Stanwood denies making any such statement to Guerrero.

8 13. ITV has contacted a manufacturer with which it has an existing
9 relationship regarding the possible production of a greens product other than
10 Supreme Greens, but no product has been manufactured. All that has occurred is
11 that certain raw materials have been ordered by the manufacturer for possible
12 production of ITV's own greens product, a product that ITV is, of course, fully
13 entitled to sell. No product has been bottled, no product has been labeled, and no
14 product has been sold. Nor is the sale of any greens product imminent, as ITV has
15 no agreement with any manufacturer to produce such a product and no current
16 plans to authorize such production. Even assuming that manufacture of such a
17 product were to commence immediately, the earliest time at which ITV could bring
18 it to market is approximately 30 to 60 days from now. If any such product is
19 produced for marketing, it will not be sold under the "Supreme Greens with MSM"
20 mark unless and until the issue of the ownership of that mark is resolved in favor
21 of ITV through the declaration of ITV's ownership that ITV has sought in its
22 complaint in the Massachusetts action and would seek in this Court.

23 14. ITV has cancelled all future media purchases in connection with the
24 Supreme Greens infomercial, and is actively substituting other infomercials for
25 media time that ITV has already purchased, at substantial expense. ITV expects
26 that, while the Supreme Greens infomercial may run in a few markets over the next
27 several days, it will be completely replaced within 7 to 10 days. ITV has no
28 intention to air the Supreme Greens infomercial in the future, and intends to sell off

1 existing inventory through reorders and its autoship program. The autoship
2 program is a contract with our customers to deliver them product in the future at
3 regular intervals.

4 15. Finally, although I understand that plaintiffs have not alleged any
5 claims for violation of any claimed trade secrets in their complaint, I understand
6 that both Guerrero and Geremesz contend that the formula for the Supreme Greens
7 product delivered to ITV is a trade secret and insinuate that ITV is using or will
8 use that alleged trade secret. As plaintiffs admit at page 12 of their memorandum
9 of points and authorities, however, ITV has never been given access to any "secret
10 formula." The root ingredients in plaintiffs' product are prominently displayed on
11 the bottles they manufacture and deliver.

12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed this 9 day of April, 2004 at Orlando, Florida.

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16 ROBERT MAIHOS
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